72-348

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term A.D. 1972

No. 72-348

JOHN A. HUTTER, et al.,
Petitioners
vs.
JOHN TANCK, et al.,
Respondents

Appeal from the United States Court of Appeals Seventh Circuit

(No. 71-1178)

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

SEVENTH CIRCUIT

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OPINIONS IN COURT BELOW

(a) There are no official or unofficial reports. The opinion of the courts below is appended to this petition.

JURISDICTIONAL GROUNDS

(b) The jurisdiction of this court is

invoked according to Section 28, paragraph 1257(3) on the grounds that the decisions of the lower courts have denied petitioners their rights claimed under the Constitution and the Amendments thereto.

(i) The judgment of the Court of Appeals Seventh Circuit was dated and entered April 5, 1972.

(ii) The Court of Appeals, Seventh Circuit denied a petition for rehearing on May 31, 1972.

(iii) Petitioners believe that the statutory provisions of Section 28 paragraph 1257(3) confer jurisdiction on this court to review the judgment by a writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

(c) In a diversity action may the plaintiffs claim as their jurisdictional amount, damages resulting from the tortious acts of an Assessor or members of a Board of Review when specifically provided by State statute?

In an action claiming the deprivation of Constitutional rights under Amendment 14 pertaining to equal treatment under the law and due process, did the lower courts err in dismissing the action because in their opinion a specific amount was not met? (In no way pertaining to this suit.)

CONSTITUTIONAL PROVISIONS INVOLVED

(d) Amendment 14 of the United States Constitution pertaining to equality before the law and due process.

STATEMENT OF THE CASE

(e) The petitioners are citizens of Illinois. The respondents are the Assessor and Members of the Board of Review, of Egg Harbor Town, and all are citizens of Wisconsin.

The plaintiffs own real property and operated a farm resort, in the town of Egg Harbor, Wisconsin, and the defendants have conspired to injure the plaintiffs, deprive them of their property and drive them from Door County, Wisconsin, where the town of Egg Harbor is located.

The question of taxes is not involved here. (A suit involving taxes is before the Supreme Court of Wisconsin case No. 55[illegible], August term 1971).

On September 2, 1970, on motion, his honor Judge John W. Reynolds of the U. S. District Court for the Eastern District of Wisconsin dismissed the case on the grounds, "It is simply that plaintiffs allege that their real property was assessed too high and unfairly and contrary to law." A Motion to reconsider was denied December 29, 1970.

The United States Court of Appeals for the Seventh Circuit affirmed the dismissal stating that the case was: "merely a suit to recover back taxes allegedly overcharged by the defendants and paid by the plaintiffs."

[redacted] the court denied [redacted] petition for a rehearing.

[redacted] petition for rehearing [redacted] to the Appendix [redacted] should be considered by [redacted] on a duplication will not be [redacted] as mentioned supra. The [redacted] have sued the State tax [redacted] for relief from the discrim- [redacted] unconstitutional [redacted] as above. The proce- [redacted] a formal hearing before [redacted] with a required transcrip- [redacted] a court reporter; a writ of [redacted] to the Circuit Court; an [redacted] to the State Supreme Court.

[redacted] complaint, evidentiary [redacted] are set forth in paragraphs 7-12 [redacted] an integral part of the basis for [redacted] 13 and 14 which constitute the [redacted] for this action.

[redacted] FOR FEDERAL JURISDICTION

(a) 1. This is a diversity action involving a tort.

2. The appellants claim their Civil [redacted] rights were violated.

[redacted] STATEMENT OF WRIT

(a) The petitioners claim that the respondents, acting under color of State law, conspired to confiscate their property, and in collusion with others, cause them to lose their property and business and drive them from Door County, Wisconsin, because they were outsiders - interlopers from Illinois and not part of the local establishment.

In so doing the respondents violated the Civil and Constitutional rights of a citizen of Illinois to enter Wisconsin, purchase and own property, engage in business, and have the same equal rights that citizens of Wisconsin have.

As set forth in detail in petitioners petition for a rehearing - see Appendix - the Wisconsin Code - chapter 70.501 and 70.502 allows an action in tort for all damages and remedies "given by law in actions for damages for tortious or wrongful acts." No limitation is present on punitive damages. Specifically applies to Assessors and Town Boards.

The attitude of this Town Board in a small township in Wisconsin does not differ from that of the Daley dynasty in Chicago (see Appeal No. 71-1419, October Term 1972 this Supreme Court).

The members have been in control 30-50 years and no one has been able to interfere with whatever they do. They do not have the vaguest idea of what the Constitution means or provides.

All courts, State or Federal, bend over backwards, trying to avoid protecting the Constitutional rights of citizens where property is involved.

There can be no freedom where people do not have the right to possess private property and have equal protection before the law.

The great, silent, middle class is becoming more and more disillusioned. Every phase of their lives is being attacked. Only the Constitution can protect them.

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All of government, regardless of party is a closely knit establishment where one part will always try to protect the other part.

Every politician official - no matter what category - owes many debts to others as he climbs up the ladder. He will not upset the applecart if he can avoid it.

If a poll were taken how many persons would say they receive fair treatment from their government? Without clout, all categories of our population are without help before a growing bureaucracy. Courts solve the problem of increased case loads by telling the litigant seeking protection of his Constitutional rights: go away, don't bother us, instead of modernizing procedure.

Illinois Supreme Court has the effective devises of requiring "Leave to appeal" and then refusing it to most seekers.

Wisconsin has not "modernized;" its Supreme Court must hear all cases.

This court of course, can lighten its increasing case load by denying more and more petitions for a writ of Certiorari. It simply means that more and more persons will be denied the key word emblazoned over the door of this court building and more and more governmental units will take heart and deny our citizens their Constitutional rights.

All these petitioners are asking this court is the right to present their case for decision and justice before a neutral unbiased jury.

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The court is asked to reverse the order of the lower court dismissing their case.

Respectfully submitted,

John A. Hutter
Attorney pro se and for
other Petitioners

* * * * * * * *

APPENDIX

COMPLAINT

Now come the plaintiffs, John A. Hutter, Clara N. Hutter and Hutter Northern Trust, by John A. Hutter, Trustee, by their attorney, John A. Hutter, and complain of the defendants as follows:

1. That jurisdiction of this Honorable Court is invoked pursuant to the provisions of Title 28, Sections 1331, 1332 and other sections applicable.

2. That the matter in controversy exceeds Ten Thousand Dollars ($10,000.) exclusive of interest and costs.

3. That at the time of the commencement of this action and at all subsequent times, including the present, the plaintiffs have been citizens of the State of Illinois.

4. That at the time of the commencement of this action and at all subsequent times, including the present, the defendants have been citizens of the State of Illinois within the area included in the Eastern District of the United States District Court.

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5. That the plaintiffs own real property in Door County, Wisconsin (Egg Harbor Township).

6. That the defendants are or have been officials of the Township of Egg Harbor.

7. That the plaintiffs allege and claim the defendants have deliberately, maliciously and by acts of malfeasance of office, assessed the real property of plaintiffs at a rate so high that it has destroyed the value of plaintiffs real property - farm property which is under the Federal land bank which provide yearly payments of about One Hundred Dollars a year with the agreement that plaintiff will not be permitted to produce any crops on restricted acreage.

8. That plaintiffs entire gross income, or receipt from said property as reported in their Federal and State farm income tax returns was approximately Twelve Hundred Dollars ($1,200.00) for the year 1969.

9. That the real estate taxes assessed against plaintiff each year amounts to approximately Three Thousand Dollars, ($3,000.00).

10. That plaintiffs allege and claim that since they acquired their farm about twenty years ago, the defendants have increased the assessed value of their property one thousand times which is an amazing 24,000%. During this period Door County has been declared a poverty area by the Federal government, population has decreased, the shipyard has just about shut down, the cherry producers and canners have become bankrupt, dairy farms have been

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forced to cease operation (including that of plaintiffs).

11. That the taxes assessed against plaintiffs by defendants is at a rate approximately thirty times that assessed against their own property and all other comparable farm property in Door County.

12. That the plaintiffs aver and claim the defendants have conspired with members of the Door County Chamber of Commerce to assess plaintiff's property so high that they would be forced to abandon their property and cease residence and operations in Door County. A suit pending against the Door County Chamber of Commerce in the U. S. District Court, Northern District of Illinois, before the Honorable Judge Julius J. Hoffman, has twice been decided in favor of plaintiffs No. 16819 and No. 17661 in appeals before the United States Court of Appeals Seventh District.

13. That the plaintiffs aver and claim that the defendants, by alleged acts of malfeasance and violation of and omission of duty, are liable to plaintiffs under provisions 70:501, 70:502 of the statutes of the State of Wisconsin.

14. That the plaintiffs aver and claim the defendants by their acts and conduct have deprived plaintiffs of their rights under the United States Constitution Amendment 14 pertaining to equal treatment under the law and due process.

15. That the plaintiffs aver and claim that the direct or proximate result of the wrongful acts of the defendants, and in view of the fact that aforementioned acts were done in a wilful and malicious manner, said plaintiffs are entitled to

forced to cease operation (insofar that of plaintiffs).

11. That the taxes assessed against plaintiffs by defendants is at a rate confiscatory, thirty times that assessed against their own property and all other comparable farm property in Door County.

12. That the plaintiffs aver and plead that the defendants have conspired with members of the Door County Chamber of Commerce to harass plaintiff's property so much that they would be forced to abandon their property and cease residence and operations in Door County. A suit pending against the Door County Chamber of Commerce in the U. S. District Court, Western District of Illinois, before the Honorable Judge Julius J. Hoffman, has already been decided in favor of plaintiffs (No. 71661 and No. 72661 in appeals before the United States Court of Appeals Seventh Circuit).

13. That the plaintiffs aver and plead that the defendants, by alleged acts of malfeasance and violation of and conspiracy to violation of [illegible] other provisions 70:502 of the Statutes of the State of Wisconsin,

14. That the plaintiffs aver and plead that the defendants by their acts and actions have deprived plaintiffs of their rights under the United States Constitution to equal protection of the law and due process.

15. That the plaintiffs aver and plead that the direct or proximate result of the wrongful acts of the defendants, and in view of the fact that aforementioned acts were done in a willful and malicious manner, said plaintiffs are entitled to

actual, exemplary and punitive damages in the sum of Five Hundred Thousand Dollars.

16. WHEREFORE, plaintiffs demand a judgment in the sum of Five Hundred Thousand Dollars ($500,000.00).

(signed) John A. Hutter

* * * * * * * * *

ORDER U.S. COURT OF APPEALS SEVENTH CIRCUIT

This is an appeal from the dismissal by the district court of an action for actual and punitive damages due to the imposition of allegedly excessive real estate taxes by Egg Harbor Township, Wisconsin. The district court dismissed the action upon motion of the defendants, all of whom are present or past officials of Egg Harbor Township, on the ground that the jurisdictional amount-in-controversy requirements had not been met. 28 U.S.C. § 1331(a) and 1332(a). The plaintiffs asserted that their real estate taxes were illegally assessed and sought to recover them as well as approximately a half-million dollars in punitive damages.

This action is, despite plaintiffs' protestations to the contrary, merely a suit to recover back taxes allegedly overcharged by the defendants and paid by the plaintiffs. As such, it is maintainable in a Federal court only if plaintiffs have pleaded, inter alia, a good faith allegation that the amount in controversy exceeds $10,000. exclusive of costs and interest. Absent clear proof to the contrary, plaintiffs' amount-in-controversy allegations must be taken as well-founded. St. Paul Mercury Indem. Co. v. Red Cab Co.

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303 U.S. 283, 288 (1937). Here, however, the amount claimed by plaintiffs to be in controversy is clearly wrong, and it is also clear as a matter of law that the necessary amount in controversy cannot be properly pleaded on these facts. According to plaintiffs' complaint, the total assessed by defendants is $3,000. We are required to apply the appropriate Wisconsin statute of limitations in this action pursuant to Erie R.R. v. Tompkins, 304 U.S. 64 (1938), and that limitation requires that actions to recover taxes illegally collected be brought within one year. Wis. Stat. Ann. § 74.73(1). Since punitive damages are not recoverable pursuant to Wisconsin statute against public officials where damages are claimed for their official acts, Wis. Stat. Ann. § 895.43(2), the jurisdictional amount in controversy cannot be met on the facts pleaded by plaintiffs. The judgment of dismissal is affirmed.

* * * * * * * * *

PETITION FOR REHEARING

The Plaintiffs-Appellants believe that the Court overlooked some essential facts in this appeal in finding "Since punitive damages are not recoverable pursuant to Wisconsin statute against public officials where damages are claimed for their official acts Wis. Stat. Ann. P895.43(2), the jurisdictional amounts in controversy cannot be met on the facts pleaded by plaintiffs."

1. The above quoted statute is not here applicable; the statute quoted on page 12 of Appellant's brief and argument is namely: Section 70.503 Civil Liability of Assessor or Member of Board of Review:

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"If the Assessor or any member of the Board of Review of any assessment district shall be guilty of any violation or commission of duty as specified in 70.501 and 70.502 he shall be liable in damages to any person or persons who may sustain loss or injury thereby, to the amount of such loss or injury, and any person sustaining such loss or injury shall be entitled to all the remedies given by law in actions for damages for tortious or wrongful acts."

No limitation is present on punitive damages.

In averment 12 of complaint, the plaintiffs claim conspiracy which is a tort.

In averment 13 plaintiffs claim damages under above quoted Wisconsin Statute.

In no sense are taxes involved here. (The question of taxes is before the Wisconsin Supreme Court, Case No. 55 awaiting oral argument.)

The board members and assessor threatened the Appellants with bodily harm; (Mrs. Hutter is age 76 years) with increasing taxes illegally every year if they did not sell out; they prevented Appellants from securing a Writ of Certiorari by testifying untruthfully that Appellants refused to testify under oath; they made necessary a detailed study by John Hutter of thousands of pieces of assessed real estate throughout Door County to prepare action proving discriminatory, confiscatory and unconstitutional assessments in wanton violation of their oath of office to uphold the Wisconsin and U. S. Constitutions by assessing property on a basis of equality. (The time spent by John Hutter as C.P.A. and Attorney had a value in excess of

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$12,000. which would certainly be in excess of $10,000. statutory amount exclusive of costs and interest. The rule pertaining to statutory amount does not require that the claim be itemized.

Furthermore on the question of real actual damages these defendants may cause the plaintiffs to lose forever farm property which the defendants assessed at $100,000. but which have gross annual receipts of $75.00 from the Federal government in land bank payments for not growing crops.

The court is asked to take judicial notice of the intention of Door County to seek a tax deed to plaintiffs property on June 23, 1972.

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This court is in error when it states, "This action is, despite plaintiffs protestations to the contrary, merely a suit to recover back taxes allegedly overcharged by the defendants and paid by the plaintiffs.

If the court will examine plaintiffs complaint, pages 2, 3, and 4 of Appendix they will not find any claim for taxes whatsoever. They will find however, alleged wanton acts of defendants, illustrating the malfeasance of the defendants. These averments clearly illustrate some of the means by which these Assessors and members of the Town Board of Egg Harbor, Wisconsin, blatantly flaunted their contempt for both the State and the Federal Constitutions they had sworn to uphold.

In averment 14, the plaintiffs claim the defendants, "by their acts have deprived plaintiffs of their rights under the United States Constitution Amendment 14 pertaining to equal treatment under the law and due process."

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As pointed out to court in oral argument there is no specific amount of damages required before the Federal courts have jurisdiction to protect the Civil and Constitutional rights of anyone within the jurisdiction of the court. Here the acts occurred within the jurisdiction of the Trial court.

Under Federal law there is no provision denying punitive damages where State officials, under color of State law, commit acts repugnant to the U. S. Constitution and any State law as providing would be repugnant to the Federal Constitution.

As pointed out to this court in oral argument, courts generally seem reluctant to protect a person from the violation of his Civil and Constitutional rights where property rights are involved, especially so when the taxing procedure of a State is involved.

This court was told by counsel in oral argument that there can be no freedom for anyone where the protection of his property rights under the Constitution are denied by those persons who swore under oath to uphold and defend the Constitution when they took office, and this of course, includes all members of the bar.

Here the Town Board members have held office for 30 - 50 years. No one has ever been able to question their arrogant disregard of the Constitution. They operate as if they ruled the Duchy of Liechtenstein. State officials break into hearings and simply tell them no one can disturb their actions.

Their attorney tells them that all he has to do if someone files suit against

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them is to make a motion to dismiss and the court will quickly find some excuse for obliging. When this has gone for fifty years how would anyone expect bureaucrats to act?

The Appellants believe that a study of this petition will make clear the right of the Appellants to have their day in court.

This court is asked to protect Appellants' Constitutional rights.

The court is asked to set aside and reverse the judgment of dismissal of the trial court.

Respectfully submitted,

* * * * * * * * *

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 31, 1972

Before

Hon. Luther M. Swygert, Chief Judge
Hon. John Paul Stevens, Circuit Judge
Hon. William J. Campbell, Senior District Judge

JOHN A. HUTTER, et al., Plaintiffs-Appellants,	Appeal from the U.S. District Court for the Eastern District of Wis. (Reynolds 68 C 502)
No. 71-1178 vs.	
JOHN TANCK, ARTHUR PETERSON, JR. ED BAVRY, MILTON HAEN, TILDEN GAEBERT, and L. VOLKMAN Defendants-Appellees.	

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IT IS ORDERED by the Court that the petition for rehearing filed in this appeal be and the same is hereby DENIED.